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CARRIERS—LIABILITY AS CARRIERS OF LIVE STOCK.—The plaintiff shipped cattle over the defendant's line, and on arrival at destination the cattle were found to be badly injured. In an action to recover for the damage, the jury was instructed, in the court below, that it was the duty of the defendant "to transport the same to their destination with reasonable care, caution and dispatch, and to deliver them at their destination in good condition." To this charge exceptions were taken by the defendant. *Held*, that the defendant was not bound to deliver the cattle "in good condition," its duty being only to use ordinary care and diligence. *Texas & P. Ry. Co. v. Stewart* (1908), — Tex. Civ. App. —, 114 S. W. 413.

The early cases were in much conflict as to the nature of the liability of the carrier of live stock. The rule has been established in England that the liability is the same as that of the carrier of goods, with the necessary limitation that there shall be no liability for injuries arising from the inherent nature and propensities of the animals themselves. *Blower v. G. W. Ry.*, L. R. 7 C. P. 655; *Kendall v. London, Etc., Ry.*, L. R. 7 Exch. 373. This limitation cannot properly be said to be an exception to the common law rule of liability. Under the common law rule, the carrier, in the absence of negligence, is not liable if the damage is caused by the inherent nature of the goods carried. HUTCHINSON, CARRIERS, § 334; *Lister v. L. & Y. Ry.* [1903], 1 K. B. 878. The English rule has generally found support in the American courts, though not without some opposition. *Hart v. Penna. R. R.*, 112 U. S. 331; *Cooper v. R. & G. R. R.*, 110 Ga. 659; *St. Louis, Etc., R. R. v. Dorman*, 72 Ill. 504; *Kinnick v. Chi., Etc., Ry. Co.*, 69 Ia. 665; *Kan. Pac. R. R. v. Nichols*, 9 Kan. 235; *Evans v. Fitchburg R. R.*, 111 Mass. 142; *Boehl v. Chi., Etc., Ry.*, 44 Minn. 191; *Waldron v. Fargo*, 170 N. Y. 130; *Ayres v. Chi., Etc., Ry.*, 71 Wis. 372; ELLIOTT, RAILROADS, § 1546; HUTCHINSON, CARRIERS, § 341. The Michigan court has consistently held to the doctrine that the acceptance of live stock imposes the duty only of exercising ordinary care, and liability only for damage resulting from the carrier's negligence. *Mich. So. R. R. v. McDonough*, 21 Mich. 165; *Lake Shore, Etc., R. R. v. Perkins*, 25 Mich. 329; *Heller v. Chi., Etc., Ry.*, 109 Mich. 53; *McKenzie v. Mich. Cent. R. R.*, 137 Mich. 112. The theory upon which these cases are based is that the carriage of live stock imposes upon the carrier duties unknown to the common law. The same might, however, be said of many other things now the subject of transportation, but entirely unknown to the common law. *Kan. Pac. R. R. v. Nichols*, supra. Whether a person is a common carrier would seem to depend, not upon the kind of goods he carries, but whether he holds himself out as such. It is imperative, it is said, that the common carrier, being a public necessity, keep abreast of the times and be required to conform to the needs of the age. *Kan. Pac. R. R. v. Nichols*, supra. However, the English rule has also been opposed in Kentucky. *Louisville, Etc., R. R. v. Hedger*, 9 Bush (Ky.) 645; *Louisville, Etc., R. R. v. Harned*, 23 Ky. Law. Rep. 1651; *Louisville, Etc., R. R. v. Wathen*, 23 Ky. Law. Rep. 2128; contra, *Cinn., Etc., Ry. Co. v. Sanders & Russell*, 25 Ky. Law. Rep. 2333. The principal case follows the rule of the minority. *Mo. Pac. Ry. v. Harris*, 67 Tex. 166, 2 S. W. 574, contra.